

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PATRICK KENDALL,

ANSWER

Plaintiff,

**07 CV 10296 (HB)**

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, COMMISSIONER  
RAYMOND KELLY, POLICE OFFICER SALVATORE  
TUDISCO, POLICE OFFICER SARAH MATHERS,  
JOHN DOE # 1-5,

Defendants.

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Defendants Salvatore Tudisco and Sarah Mathers, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the complaint, respectfully allege upon information and belief, as follows<sup>1</sup>:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint.
3. Deny the allegations set forth in paragraph "3" of the complaint, except admit that plaintiff purports to seek the damages as stated.
4. Deny the allegations set forth in paragraph "4" of the complaint, except admit that plaintiff purports to bring this action and to invoke pendent and supplemental jurisdiction of the Court as stated therein.

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<sup>1</sup> Defendants City of New York and Raymond Kelly served and filed their answer to the complaint on February 14, 2008.

5. Deny the allegations set forth in paragraph "5" of the complaint, except admit that plaintiff purports to proceed as stated therein.

6. Deny the allegations set forth in paragraph "6" of the complaint, except admit that plaintiff purports to base venue as stated therein.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the complaint.

8. Admit the allegations set forth in paragraph "8" of the complaint.

9. Deny the allegations set forth in paragraph "9" of the complaint, except admit that Raymond Kelly is the Commissioner of the New York City Police Department and that plaintiff purports to sue him as stated therein.

10. Deny the allegations set forth in paragraph "10" of the complaint, except admit that Salvatore Tudisco and Sarah Mathers are employed by the City of New York as police officers and that plaintiff purports to sue them as stated therein.

11. Paragraph "11" of the complaint contains conclusions of law rather than averments of fact and accordingly requires no response.

12. Deny the allegations set forth in paragraph "12" of the complaint, except admit that plaintiff was arrested on October 21, 2006 in the vicinity of 115 Essex Street in New York.

13. Deny the allegations set forth in paragraph "13" of the complaint.

14. Deny the allegations set forth in paragraph "14" of the complaint.

15. Deny the allegations set forth in paragraph "15" of the complaint.

16. Deny the allegations set forth in paragraph "16" of the complaint, including all subparts thereto.

17. In response to the allegations set forth in paragraph "17" of the complaint, defendants repeat and reallege the responses set forth in paragraph "1" through "16" inclusive of this answer, as if fully set forth herein.

18. Deny the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. In response to the allegations set forth in paragraph "20" of the complaint, defendants repeat and reallege the responses set forth in paragraph "1" through "19" inclusive of this answer, as if fully set forth herein.

21. Deny the allegations set forth in paragraph "21" of the complaint.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in paragraph "23" of the complaint.

24. Deny the allegations set forth in paragraph "24" of the complaint.

25. Deny the allegations set forth in paragraph "25" of the complaint.

26. Deny the allegations set forth in paragraph "26" of the complaint.

27. Deny the allegations set forth in paragraph "27" of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

28. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

29. Defendants Tudisco and Mathers have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

30. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or that of a third party and was not the proximate result of the defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

31. Defendants Tudisco and Mathers have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

32. Plaintiff may have failed to comply with the conditions precedent to suit under State Law.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

33. At all times relevant to the incident, defendants acted reasonably, in the proper, lawful exercise of their discretion.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

34. Plaintiff provoked any incident.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

35. Plaintiff's claims may be barred in part by the applicable statute of limitations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

36. There was probable cause for plaintiff's arrest, detention and prosecution.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

37. Plaintiff's claims may be barred in part by the doctrines of *res judicata* and/or *collateral estoppel*.

**WHEREFORE**, defendants Salvatore Tudisco and Sarah Mathers request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated:           New York, New York  
                  February 27, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants  
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(212) 788-1895

By:   
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Jessica T. Cohen (JC 0044)  
Assistant Corporation Counsel

cc: Andrew Stoll, Esq.  
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71 Nevins St.  
Brooklyn, New York 11217 (via ECF)

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Defendants.

**ANSWER**

***MICHAEL A. CARDODOZ***  
*Corporation Counsel of the City of New York*  
*Attorney for Defendants*  
*100 Church Street*  
*New York, New York 10007*

*Of Counsel: Jessica T. Cohen*  
*Tel: (212) 788-1895*  
*NYCLIS No.*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200...*

*..... Esq.*

*Attorney for .....*